IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1184 OF 2005

Saturam Bhagoji Naik and others. ... Appellants.
Versus.
Nilu Yellappa Naik
(since deceased through LRs.)
1A. Smt.Gourabai Nilu Naik & others. ... Respondents.

Shri N.D.Hombalkar for the Appellants.

Shri M.R.Suryawanshi for Respondents Nos.1A,1B,1C & 1F.

Shri S.A.Rajeshirke for the Respondents Nos.2 to 5.

CORAM : ABHAY S.OKA, J.

DATED : 14th August, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Appellants in the Second Appeal are the original Plaintiffs. The Appellants filed a suit for declaration that they were the owners of the suit property, namely property bearing Grampanchayat property No.965 including house and backyard situated in land bearing Gat No.788 admeasuring 4 ares within the village Nesari, Taluka Gadhinglaj, District Kolhapur. The Appellants also prayed for perpetual injunction restraining the Respondents from interfering with their possession. The Defendants filed written statement and contended that they were in actual possession of the suit property and therefore, there is no merit in the suit. The trial Court dismissed the suit. In appeal an

order was passed calling for findings of the trial Court on additional issues framed by the Appellate Court. After receipt of the findings, the Appeal was heard and the same has been dismissed.

2. The learned Advocate for the Appellants submitted that both the Courts below have not appreciated the documentary evidence on record and in particular documents at Exhs.128 and 145. He submitted that the Courts below have committed an error by holding that House No.965 was constructed by the Respondents. He submitted that in any case the Respondents have no title and their possession was purely permissive in nature. He invited my attention to the Regular Civil Suit No.43 of 1998 filed by the Respondent No.1A in which a prayer for partition has been made. He pointed out that Gat No.788 is the subject matter of the said suit.

3. I have considered the submissions. While dismissing the suit filed by the Appellants, the trial Court held that the Appellants have failed to establish that they were in possession of the suit property and that their possession was referable to lawful title. While recording the finding on the additional issue framed by the Appellate Court, the learned trial Judge answered the issue of limitation against the Appellant.

However, he held that the original Defendant has failed to establish that he has perfected his title by adverse possession. On the issue of limitation the Appellate Court agreed with the trial Court. As held by the trial Court, the Appellate Court has also held that the original Defendant has failed to prove that he has perfected his title by adverse possession over the suit property.

4. These findings have been recorded after appreciation of the oral and documentary evidence on record. After having perused the impugned Judgments, I find that no substantial question of law arises and there is no merit in the Second Appeal.

5. At this stage Shri Hombalkar appearing for the Appellants submitted that the suit for partition filed by the Respondent No.1A is pending and in the said suit equities may be directed to be adjusted. Shri Suryawanshi appearing for Respondent Nos.1A, 1B, 1C and 1F pointed out that the house property which is the subject matter of the Second Appeal has been specifically excluded from partition suit which is filed by the Respondent No.1A. As the said suit is pending I am not referring to the merits of the said suit. Notwithstanding the dismissal of the Second Appeal, it will be open for the Appellants to raise all permissible

contentions in the said suit.

6. Subject to what is stated above, the Second Appeal is dismissed.

Judge.